IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Bail Appl..No. 6789 of 2007()

CRIME NO.206/06 OF CHENGAMANAD POLICE STATION
C.B.C.I.D CRIME NO.131/CR2/S2/2006, ERNAKULAM

PETITIONER:

M.ABDUL KALAM,
S/O.N.MUHAMMED ADBUL KHADER,
AGED 34 YEARS, RESIDING AT CHAVETTY KONATHU
VEEDU, PANGODU PO., KILIMANOOR, THIRUVANANTHAPURAM

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENTS: COUNTER PETITIONERS

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. SUPERINTENDENT OF POLICE,
C.B.C.I.D, KALOOR,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 6789 of 2007

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Dated this the 14th day of November, 2007

ORDER

This is the second application for anticipatory bail filed by the petitioner, who is the 3rd accused in a crime registered for offences punishable, inter alia, under Section 468 IPC. He had come to this Court earlier along with 2nd accused claiming anticipatory bail. By order dated 30th August, 2007 in B.A.No.4818/07 that joint application for anticipatory bail by accused 2 and 3 was dismissed with the observation that the petitioners must surrender before the learned Magistrate or the Investigating Officer and then apply for regular bail. The petitioner has now come to this Court with this second application for anticipatory bail. The learned counsel for the petitioner submits that it was omitted to bring to the notice of this Court, when the matter came up for hearing on previous occasion, that the petitioner is crucially ill and he is not able to appear before the learned Magistrate and surrender. He has undergone kidney transplantation. He is now under treatment. It is not possible for the petitioner to appear before the learned

Magistrate. In these circumstances, appropriate directions may be issued under Section 438 Cr.P.C it is prayed.

2. The learned Public Prosecutor was requested to take specific instructions on this aspect. The learned Public Prosecutor now submits that the Investigating Officer is satisfied that the petitioner herein is badly ill and he is unable to appear before the learned Magistrate and seek regular bail in the ordinary course. The learned Public Prosecutor submits that the State does not have any objection against appropriate directions being issued in favour of the petitioner under Sec.438 Cr.P.C. Appropriate conditions may be imposed in the interests of a fair, efficient and proper investigation.

3. I am satisfied, in the peculiar facts and circumstances of the case, that appropriate directions under Sec.438 Cr.P.C can be issued in favour of the petitioner.

4. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) The Investigating Officer shall be at liberty to

interrogate the petitioner now at the place where he is. After such interrogation, if the petitioner were arrested by the Investigating Officer, he shall be released on regular bail on condition that he executes a bond for Rs.25,000/-(Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the arresting officer.

iii) The petitioner shall, within three months on the date of said release on bail, appear before the learned Magistrate and seek regular bail in the ordinary course.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE